(1)

Supreme Court, U.S.
FILED

02-1825 APR 7 2003

No.

In The

Supreme Court of the United States

Royce E. Mitchell, Jr.,
Petitioner

v.

The City of Houston,
Anthony Hall,
C.H. Brenham,
Daniel Jay Simms,
Respondents.

On Petition For Writ Of Certiorari

To The United State Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Royce E. Mitchell, Jr.,
Pro Se

10232 C.R. 69
Manvel, Brazoria County, Texas
Tel.: 281-331-8607

35 pp

QUESTIONS PRESENTED FOR REVIEW

Petitioners petition for redress of grievances was dismissed for failure to state a claim by the United States Court of Appeals, Fifth Circuit, because petitioner refused to consent to being a "person" within the meaning of the United States Code. Because petitioner is not a "person" within the meaning of the Fourteenth Amendment, or the United States Code, petitioner could not legally petition for redress of grievances under the United States Code, specifically, 42 U.S.C. 1983, leaving petitioner without a path to redress of grievances. Petitioner believes this condition to be unconstitutional and a violation of the Bill of Rights of 1791. In the alternative, Petitioner believes he is the victim of the abuse of judicial discretion in the District Court's failure to consider evidence presented related to Petitioner's Citizenship status. Therefore, petitioner's questions presented for review are as follows:

1. To whom pertains the original Common Law de Jure citizenship of the Constitution of the United States?

2. Was that de jure citizenship destroyed with the advent of the Fourteenth Amendment?

3. Can the de facto, artificial citizenship created by the Fourteenth Amendment be imposed upon those who are of the original de jure citizenship without their full knowledge and consent?

PARTIES TO THIS PROCEEDING

Royce Eugene Mitchell, Jr.,
Pro Se,
Petitioner.

10231 C.R. 69
Manvel, Brazoria County, Texas

City of Houston,
Anthony Hall,
C.H. Brenham,
Daniel Jay Simms,
Respondents.

C/O City of Houston Legal Department,
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PETITION

A. History

On January 7, 2003, the United States Court of Appeals for the Fifth Circuit (Fifth Circuit) dismissed petitioner's appeal stating that petitioner's "argument that he, as a 'de jure' citizen, has a right to bring his suit without invoking 42 U.S.C. § 1983 is meritless." (Appendix, Exhibit A). Using *Hearth Inc. v. Dep't of Pub. Welfare*, 617 F.2d 381 (5th Cir 1980) and *Hunt v. Smith*, 67 F. Supp. 2d 675, 681 (E.D. Tex. 1999), the Fifth Circuit held that "when a statutory mechanism is available, 42 U.S.C. § 1983 being a prime example, plaintiffs must invoke its protection."

Petitioner dealt squarely with this issue in his response to the magistrate judge who made this a point in her recommendation for dismissal. Hearth dealt with a case that was brought under the Fourteenth Amendment, which was written to provide a legal way to grant civil rights through legislation to persons subject to the jurisdiction of the United States. Hearth has nothing to do with the case at hand, as petitioner pointed out to the Fifth Circuit.

The refusal to recognize petitioner's de jure citizenship, despite the fact that petitioner submitted his genealogy, supported by documents admissible under the Federal Rules of Evidence, is what lies at the core of this appeal. Indeed, Petitioner's status is what lies at the core of the underlying action. Petitioner is a member of the Posterity spoken of in the Preamble to the Constitution for the united States of America (1787). No defendant has disputed this fact or the evidence submitted.

Yet, the court, upheld by the Fifth Circuit, has maintained that petitioner must use legislation designed for persons, whose de facto citizenship is a function of the Fourteenth Amendment. However, petitioner cannot avail himself of 42 U.S.C. 1983 without creating an admission that he is a de facto citizen, which would be presenting a lie to the court. This situation has created a condition under which petitioner is denied his right to petition the courts for redress of grievances, a right guaranteed to him as a member of the Posterity through Article the First of the Bill of Rights (1791) which states: "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the Government for a

redress of grievances."

B. Who is the Petitioner?

Petitioner is a member of the Posterity spoken of in the Preamble to the Constitution for the united States of America (1787), a descendant of the People who created said Constitution. Petitioner submitted his genealogy, supported by documents admissible under the Federal Rules of Evidence, as evidence of Petitioner's Citizenship for the District Court to consider.

"The Constitution of the United States was ordained and established, not by the States in their sovereign capacities, but emphatically, as the preamble of the Constitution declares, by '*the People* of the United States.'" *Martin v. Hunter's Lessee*, 14U.S.304 (U.S.Virginia 1816), I Wheat 304, at 324 (1814).

"The Government of the Union, then is, emphatically and truly, a *government of the people*. In form, and in substance, it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *M'Culloch v. State of Maryland*, 17 U.S. 316 (U.S.Md. 1819) 4 Wheat 316, at 404 & 405 (1819). (*Emphasis Petitioner's*).

"We have already had occasion, in considering the nature of the Constitution, to dwell upon the terms in which the preamble is conceived, and the proper conclusion deducible from it. *It is an act of the people*, and not of the States in their political capacities. It is an ordinance or establishment of government, and not a compact, though originating in consent; and it binds as a fundamental law promulgated by the sovereign authority, and not as a compact or treaty entered into and *in fieri*, between each and all the citizens of the United States, as distinct parties. The language is: 'We, the people of the United States,' *(not, We, the States,)* 'do ordain and establish, *(not, do contract and enter into a treaty with each other)* 'this Constitution for the United States of America' *(not this treaty between the several states)*. And it is, therefore, an unwarrantable assumption, not to call it a most extravagant stretch of interpretation, wholly at variance with the language, to substitute other words and other senses for the words and senses incorporated, in this solemn manner, into the substance of the instrument itself. (*Emphasis Petitioner's*)

"We have the strongest assurances that this preamble was not adopted as a mere formula, but as a solemn promulgation of a fundamental fact, vital to the character and operations of the government. The obvious object was to substitute a government of the people for a confederacy of the States; a constitution for a compact. The difficulties arising from this source were not slight; for a notion commonly enough, however incorrectly, prevailed, that, as it was ratified by the States only, the States respectively at their pleasure might repeal it; and this, of itself, proved the necessity of laying the foundations of a National Government deeper than in the mere sanction of delegated power. The convention determined that the fabric of the American empire ought to rest and should rest on the solid basis of *the consent of the people*. The streams of national power ought to flow and should flow immediately from the highest original fountain of all legitimate authority. And accordingly, the advocates of the Constitution so treated it in their reasoning in favor of its adoption. 'The Constitution,' said the Federalist, 'is to be founded on the assent and ratification of the people of America, given by deputies elected for that purpose; but this assent and ratification is to be given by the people, not as individuals composing a whole nation, but as composing the distinct and independent states to which they belong.' And the uniform doctrine of the highest judicial authority has accordingly been, that *it was the act of the people*, and not of the States; and that it bound the latter, *as subordinate to the People*.' 'Let us turn,' said Mr. Chief Justice Jay, 'to the Constitution. The people therein declare that their design in establishing it comprehended six objects: 1. To form a more perfect union; 2. to establish justice; 3. to insure domestic tranquility; 4. to provide for the common defense; 5. to promote the general welfare; 6. to secure the blessings of liberty to *themselves and their Posterity*. It would,' he added, 'be pleasing and useful to consider and trace the relations which each of these objects bear to the others, and to show that, collectively, they comprise every thing requisite, with the blessing of Divine Providence, to render a people prosperous and happy." *Commentaries on the Constitution of the United States*. Joseph Story, Vol 1., at pages 340, 341. (*Emphasis Petitioner's*).

"The words 'People of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions,

form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the 'sovereign people' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'Citizens,' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of being who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them."

"It is not the province of this court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; *to those who formed the sovereignty and framed the Constitution.* The duty of the court is to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to it's true intent and meaning when it was adopted." *Dred Scott v. Sanford*, 60 U.S. 393, 19 Howard 393, (U.S. Mo. 1856) at pages 404 & 405. (*Emphasis Petitioner's*).

What the Fourteenth Amendment did was to put into place a way of granting protection and rights to those who did not fall into the aforementioned class of citizenship. It was for those persons who had no citizenship as a member of the Posterity. The Fourteenth Amendment did not change anything concerning the rights of the de jure citizen, member of the Posterity spoken of in the Preamble to the Constitution for the united States of America (1787).

"The last clause in the Preamble is to 'secure the blessings of Liberty to *ourselves and our Posterity.*' And surely no object could be more worthy of the wisdom and ambition of the best men in any age. If there be any thing which may justly challenge the admiration of all mankind, it is that sublime patriotism which, looking beyond it's own times and its own fleeting pursuits, aims to secure

the permanent happiness of Posterity by laying the broad foundations of government- upon immovable principles of justice. Our affections, indeed, may naturally be presumed to outlive the brief limits of our own lives, and to repose with deep sensibility upon *our own immediate descendants*. But there is a noble disinterestedness in that forecast which disregards present objections for the sake of all mankind, and erects structures to protect, support, and bless the most distant generations." Commentaries, Story, Supra, at page 368, vol. 1. (*Emphasis Petitioner's*).

"It is very clear, therefore, that no State can, by any act or law of it's own, passed since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the united States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it." *Dred Scott v. Sanford*, supra. At page 406.

"It is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as Citizens in the several States, became also Citizens of the New Political Body; but *none other*; It was formed by them, and for *them and their Posterity*, but for no one else, and the personal rights and privileges guaranteed to Citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards, by birthright or otherwise become members, according to the provision of the Constitution and principles upon which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the united States. And it gave to each Citizen rights and privileges outside his State which he did not before possess, and placed him within every other State upon a perfect equality with it's own Citizens as to rights of person and rights of property; it made him a Citizen of the united States." *Dred Scott v. Sanford*, Supra. at page 406 & 407. (*Emphasis Petitioner's*).

"The brief Preamble sets forth by whom it was formed, for

what purposes, and for whose benefit and protection. It declares that it is formed by the people of the united States; that is to say, by those who were members of the different political communities in the several States; and it's great object is declared to be to secure the blessings of liberty to *themselves and their Posterity*. It speaks in general terms of the people of the united States, and of Citizens of the several States, when it is providing for the exercise of powers granted or the privileges secured to the Citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the People. It uses them as terms so well understood, that no further description or definition was necessary." *Dred Scott v. Sanford*, supra, at pages 410 & 411. (*Emphasis Petitioner's*).

"It becomes necessary, therefore, to determine who were Citizens of the several States when the Constitution was adopted. In order to do this, we must recur to the Governments and Institutions of the thirteen colonies, when they separated from Great Britain and formed new Sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognized as the People or Citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

"In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument." *Dred Scott v. Sanford*, supra, page 407. (*Emphasis Petitioner's*).

It was this situation wherein the freedmen had no citizenship or rights that the Fourteenth Amendment (1868) was enacted to correct. The enactment of the Fourteenth Amendment had no effect on the rights secured to the de jure citizens; it neither created any new rights or privileges that did not already exist under the Constitution of 1787 or the Bill of Rights of 1791.

"The American colonies brought with them the Common, and not the civil law; and each State, at the Revolution, adopted either

more or less of it, and not one of them exploded the principle, that the place of birth conferred Citizenship." *Amy v. Smith*, 1 Litt. Ky.R. 326, at pg 337 to 338.

"Hence I conclude, that every white person at least, born within the united States, whether male or female, is, by birth, a citizen, within the meaning of our Constitution; and as such, has rights secured by it..." *Amy v. Smith*, supra, at page 341.

The passage of the Fourteenth Amendment did not change the Constitution for the united States of America, nor did it change the Articles in Amendment thereto, known to most as the Bill of Rights. "But it clearly results that the proposition and the contentions under it, if acceded to, would cause one provision of the Constitution to destroy another; ... This result ... would create radical and destructive changes in our constitutional system and multiply confusion." *Brushaber v. Union Pacific R.R. Co.*, 240 1, 12.

The original Constitution and its Bill of Rights are exactly the same today as they were when adopted (1787 - 1791). Not one word, syllable or punctuation mark has changed in all the ensuing years. Those words have the same meaning today that they had then. They can only be construed and extended according to their full historical meaning at the time of the adoption of the Constitution. "We are bound to interpret the Constitution in the light of the law as it existed at the time it was adopted...." *Mattox v. United States*, 15 S.Ct. 337, 156 U.S. 237, 243 (U.S.Kan.1895).

"The change in public opinion and feeling in relation to the African race, *(or any other people, for that matter)* which has taken place since the adoption of the Constitution, cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted" *Dred Scott v. Sanford*, 60 U.S. 393, 1, 9. (1856). (*Emphasis Petitioner's*).

"We deal here with a classification based upon the race of the participants, which must be viewed in light of the 'historical fact' *the central purpose of the Fourteenth Amendment was to eliminate racial discrimination* emanating from official sources in the States." *Adarand Constructors, Inc. v. Pena*, 115 S.Ct. 2097, at 2107 (Decided June 12, 1995). The Posterity Citizen did not need this Amendment because

de jure Citizen already had the right to be free from discrimination secured to him through the constraints of the Constitution and enumerated by virtue of the Bill of Rights of 1791.

In the construction of the Constitution, the following rules are usually observed:

"1. The practical construction must be uniform. A Constitution does not mean one thing at one time and another at some subsequent time.

"2. The object of construction is to give effect to the intent of the people in establishing the Constitution. It is the intent of the lawgiver that is to be enforced. But the intent is to be found in the instrument itself." *The General Principles of Constitutional Law*, Cooly, 3rd Little Brown & Co. (1898), pages 386 to 387.

"On the other hand, there is a significant historical fact in all this. Clearly, one of the purposes of the Thirteenth and Fourteenth Amendments and of the 1866 Act and of Section 1982, was to give the Negro citizenship..." *Jones v. Alfred H. Mayer Co.*, 379 F. 2d 33, 43 [51 (1967).

"The object of the Fourteenth Amendment, as is well known, was to confer upon the colored race the right of citizenship." *United States v. Wong Kim Ark*, 18 S.Ct. 456, at 473; 169 U.S . 649 at 692 (U.S.Cal. 1898).

"It would be a remarkable anomaly if the national government, without this amendment, could confer citizenship on aliens of every race or color, and citizenship, with civil and political rights, on the "inhabitants" of Louisiana and Florida, without reference to race or color, and can not, with the help of the amendment, confer on those of the African race, who have been born and always lived within the United States, all that this law seeks to give them." *United States v. Rhodes*, 27 Fed. Cas. 785, at 794 (1866). This condition was not unique to the Negro race. It pertained to all races who were not White, Anglo-Saxon and Christian.

"No white person . . . owes the status of citizenship to the recent amendments to the Federal Constitution. The history and aim of the Fourteenth Amendment is well known, and the purpose had in view in its adoption well understood. That purpose was to confer the status of citizenship upon a numerous class of persons domiciled within

the limits of the United States, who would not be brought within the operation of the naturalization laws because native born, and whose birth, though native, had at the same time left them without the status of citizenship. These persons were not white persons, but were in the main, persons of African descent, who had been held in slavery in this country, or, if having themselves never been held in slavery, were the native born descendants of slaves." *Van Valkenburg v. Brown*, 43 Cal. Sup. at. 46 and 47 (1872).

In summary, Petitioner is a member of the Posterity spoken of in the Preamble to the Constitution for the united States of America. Petitioner is the Posterity of the One People who created the Constitution of 1787, which in turn created the government of the united States. Petitioner is among the Sovereigns who are members of the One People who created the Constitution of 1781, the Bill of Rights of 1791 and the federal government itself.

Petitioner's family was able to access the federal courts by right in redress of grievances long before the existence of the Fourteenth Amendment. In fact, Congress was prohibited from creating any law which interfered with Petitioner's right to redress of grievances. However, through the use of a legal tool called "presumption", Petitioner's right to redress of grievance has been trampled upon, attempting to force Petitioner to give up his de jure Citizenship for the citizenship of the de facto citizen, whose rights are granted, instead of unalienable.

C. To Whom does 42 U.S.C. § 1983 Apply?

The United States Code, Sec. 42 U.S.C. § 1983 states as follows:

"Every *person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States *or other person* within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

(*Emphasis Petitioner's*).

As the honorable Justices can see, § 1983 is written to apply to persons who are citizens and against persons who subject those person citizens to deprivation of rights.

The Code Definitions Act, 1 U.S.C. § 1, states in part: "the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;" The term "individual" is undefined in the Act. In Black's Law Dictionary, Sixth Edition, page 773 "individual," the word "individual" is defined to be: "As a noun, this term denotes a single *person* as distinguished from a group or class, and also, very commonly, a private or *natural person* as distinguished from a partnership, corporation or association..." Nowhere in either the United States Code or in Black's Law Dictionary is person defined to include a human being who is a de jure Citizen of the united States.

The term person, except as stated herein, is otherwise undefined in the United States Code, as it relates to this petition. Resorting to Black's Law Dictionary, Sixth Edition, page 1142 "person" we find "person" defined as follows: "*In general usage*, a human being (i.e. natural *person*), though by statute term may include labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." It defies logic that the Court could accept that any corporation or other entity defined to be a "person" could be placed upon the same constitutional standing and the same Constitutional protection as the One People whose Posterity live today, and for whose protection the Constitution of 1787 was written. (*Emphasis Petitioner's*).

The definition of the term "person" in Black's Law Dictionary, *supra*, goes on to state: "Scope and delineation of term is necessary for determining those to whom Fourteenth Amendment affords protection since this Amendment expressly applies to 'person.'" However, as we have seen, the Fourteenth Amendment did nothing to affect the rights and privileges of the de jure, white, Posterity Citizen. Therefore, those laws written to affect "persons" cannot possibly have been meant to apply to those who are not "subject to the jurisdiction" of the United States. The One People who created the Constitution for the united States of America for themselves

and their Posterity were not subject to the jurisdiction of the created government. It was the government that was, and is, subject to their jurisdiction. It defies logic for the District Court to state to this member of the Posterity that he must file suits like a corporation or a freed slave.

Moreover, placing Petitioner under the constraints forced upon persons filing suit is a violation of Article the First in Amendment to the Constitution for the united States of America (1791), which states in part: "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances." Congress was granted no power which would permit Congress to enact any legislation changing the legal or political status of the People, or their Posterity. The enactment of the Fourteenth Amendment created a citizenship, that of the United States citizen who was subject to the jurisdiction of said government. That citizenship was not the same as the Citizenship of the Posterity, and indeed could never be because there was no authority or power granted to the government of the United States to create said citizenships, as the Court in Dred Scott, supra, pointed out correctly. For the District Court to have said that Petitioner must adhere to rules created to allow access to the federal courts to the de facto, Fourteenth Amendment citizen is a violation of Article the First of the Bill of Rights of 1791 because it is the creation of law abridging the right of the people to petition the government for redress of grievances.

Therefore, the dismissal of petitioner's case for those reasons was either an abuse of discretion on the part of the District Court, or the section of law called "42 U.S.C." is void for lack of clarity and blatantly unconstitutional. It is Petitioner's belief that the District Court abused its discretion in refusing to consider the law and the evidence presented to the court and that 42 U.S.C. is indeed good law when applied to the "persons" for which it was intended.

D. Prayer

Petitioner prays that this Court will reverse the Fifth Circuit and remand this case to the District Court for the Southern District of Texas for trial.

Petitioner further prays that the Court will issue a Declaratory

Judgment stating that Petitioner is a member of the Posterity spoken of in the Preamble to the Constitution for the united States of America (1787) and that Petitioner is not a person within the meaning of the United States Code.

Petitioner further prays that the Court will issue a Declaratory Judgment stating the Petitioner is a member of the Sovereign People who created the Constitution for the united States of America and the Petitioner is therefore Sovereign over both the State of Texas and the United States of America.

Respectfully submitted,

_____

Royce Mitchell, Jr., Pro Se

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20287
Summary Calendar

ROYCE EUGENE MITCHELL, JR.

Plaintiff-Appellant

versus

THE CITY OF HOUSTON, TEXAS;
ANTHONY HALL, JR., Houston City Attorney;
C.H. BRENHAM, Individually, and as a City of Houston Police Officer; DANIEL JAY SIMMS, Individually, and as a Houston Municipal Court Judge,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CV-1790

Before DAVIS, JONES, AND DENNIS, circuit judges.

PER CURIAM:*

Royce Eugene Mitchell, Jr., appeals the grant of the defendants' motion to dismiss with prejudice for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Mitchell argues that the district court erred in holding that he relied upon invalid authority to support his contention that there are two classes of citizenship and that he should be considered "sovereign." He also argues that the district abused its discretion in holding

*Pursuant to 5TH Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

that he was a "person" required to file suit under 42 U.S.C. § 1983, arguing that he has the right to bring suit undr the Bill of Rights, and in invoking the Rooker/Feldman doctrine where there had been no state court judgment. We review a district court's ruling on a Rule 12 (b) (6) motion for failure to state a claim de novo. See Oliver v. Scott, 276 F.3d 736, 740 (5th Cir. 2002).

Mitchell's argument that he, as a "de jure" citizen, has a right to bring suit under the Constitution without invoking 42 U.S.C. § 1983 is meritless. The district court correctly noted that we have long harbored a great reluctance to allow the pursuit of constitutional causes of action directly. Even the most cursory reading of our case law demonstrates beyond cavil that we have permitted prosecution of such actions directly under the Constitution only when necessitated by a total absence of alternative courses and "no other means" existed to seek "redress for flagrant violations of the plaintiff's constitutional rights." When a statutory mechanism is available, 42 U.S.C. § 1983 being a prime example, plaintiffs must invoke its protection. See Hearth, Inc. v. Dep't of Pub. Welfare, 617 F.2d 381 (5th Cir. 1980); Hunt v. Smith, 67 F. Supp. 2d 675, 681 (E.D. Tex. 1999)).

Without pleading 42 U.S.C. § 1983, Mitchell has failed to state a claim upon which relief can be granted. Consequently, we need not address whether the district court's alternative holding that the Rooker/Feldman doctrine requires abstention. The judgment of the district court dismissing Mitchell's claims is AFFIRMED.

Attest,
s/ Charles R. Fulbruge III
Clerk, U.S. Court of Appeals,
Fifth Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROYCE EUGENE MITCHELL, JR.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL NO. H-00-1790
	§	
THE CITY OF HOUSTON, TEXAS,	§	
et al.,	§	
Defendants.	§	

FINAL JUDGMENT

In conformity with the Order Adopting Memorandum and Recommendation filed February 22, 2002, it is ADJUDGED that Plaintiff take nothing against Defendants.

All relief not granted herein is DENIED.

Defendants are awarded their costs.

THIS IS A FINAL JUDGMENT.

Signed this 22nd day of February, 2002, in Houston, Texas.

s/ Sim Lake
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROYCE EUGENE MITCHELL, JR.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL NO. H-00-1790
	§	
THE CITY OF HOUSTON, TEXAS,	§	
et al.,	§	
Defendants.	§	

ORDER ADOPTING MAGISTRATE JUDGE'S
MEMORANDUM AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Memorandum and Recommendation and is of the opinion that said Memorandum and Recommendation should be adopted by this Court.

It is therefore ORDERED that the United States Magistrate Judge's Memorandum and Recommendation. is hereby ADOPTED by this Court.

SIGNED at Houston, Texas, this 22nd day of February, 2002.

s/ Sim Lake
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROYCE EUGENE MITCHELL, JR.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL NO. H-00-1790
	§	
THE CITY OF HOUSTON, TEXAS,	§	
et al.,	§	
Defendants.	§	

MEMORANDUM, RECOMMENDATION AND ORDER[1]

Presently before the court are the following motions: Defendants' City of Houston, Texas, Anthony Hall, Jr., C.H. Brenham and Daniel Jay Simms' Motion To Dismiss Plaintiff's Prayer For Punitive Damages (Docket Entry Number 8), Defendants' City of Houston, Texas, Anthony Hall, Jr., C.H. Brenham and Daniel Jay Simms' Motion To Dismiss (Docket Entry Number 9), Plaintiff's Rebuttal To Defendant's [sic] Answer and Request to Strip All Immunity From Defendants (Docket Entry Number 13), Plaintiff's Motion to Admit Plaintiff's Genealogy and Notice of Motion (Docket Entry Number 27), Plaintiff's Memorandum In Support Of Motion For Temporary Restraining Order (Docket Entry Number 31), Plaintiff's Motion In Limine (Docket Entry Number 33), and Plaintiff's Motion To Take Judicial Notice and Notice of

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[1]This case was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 (b) (1) (A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Fed. R. Civ. P. 72. Docket Entry Number 16.

Motion (Docket Entry Number 34). After considering the motions and the pertinent pleadings, the court **RECOMMENDS**, for the following reasons, that Defendants' City of Houston, Texas, Anthony Hall, Jr., C.H. Brenham and Daniel Jay Simms' Motion To Dismiss (Docket Entry Number 9) be **GRANTED** and that the action be **DISMISSED** with prejudice. In light of this, the court further **RECOMMENDS** that the remaining motions be **DENIED** and **MOOT**.

Although absent from the pending motions list for this case, it appears that Plaintiff filed an application for a writ of habeas corpus and a Request For Findings Of Fact And Conclusions Of Law that have not been ruled on. Plaintiff's Request For Findings Of Fact And Conclusions Of Law (Docket Entry Number 30) is **DENIED**.[2] Furthermore, the court **RECOMMENDS** that Plaintiff's habeas corpus application (Docket Entry Number 4) be **DENIED**.[3]

I. CASE BACKGROUND

This action arose from a simple traffic stop by a Houston Police officer. On June 21, 2000, Plaintiff was stopped by Officer C.H. Brenham (Officer Brenham), and issued a citation for failing to have a vehicle registration and a vehicle inspection sticker. Although Plaintiff informed the officer that he believed that those statutes did not apply to him, Officer Brenham

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[2]Findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52 are not required on decisions of motions. FED. R. CIV. P. 52(a). There has been no action in this case falling under the auspices of Rule 52.

[3]Even if Plaintiff's fear of imminent arrest satisfies the "in custody" requirement, see, e.g., Bates v. Estelle, 483 F.Supp. 224 (S.D. Tex. 1980) (McDonald, J.), there is no evidence in the record that Plaintiff exhausted his state court remedies, a prerequisite for this court to consider a habeas corpus petition. See Dickerson v. Louisiana, 816 F.2d 220 5th Cir.), cert. denied, 484 U.S. 956 (1987) (discussing the exhaustion requirement in both pretrial and post-trial situtations). Although Plaintiff's application states that he has exhausted the state court remedies, his description of the actions taken belies this claim.

did not investigate Plaintiff's defense and issued the citation anyway.

On July 20, 2000, Plaintiff appeared in municipal court before Defendant Daniel Jay Simms (Judge Simms). According to Plaintiff, Judge Simms berated and humiliated him and forced him to enter a plea by threatening him with jail and by the presence of an armed marshall. Plaintiff then filed a "Notice of Withdrawal of Pleas and Recission of Signature Accepting Court Date", a motion for a trial de novo, and a motion for findings of fact and conclusions of law.

Plaintiff's municipal court trial was set for October 17, 2000. He claims that he filed a motion for a continuance for religious reasons; when he returned home from his week of Holy Day services, he found a notice of possible arrest for nonappearance. On December 1, 2000, after continuing to receive letters from Municipal Court, Plaintiff filed an application for writ of habeas corpus in Harris County, Texas. As of the date of filing of the instant action, May 30, 2001, no action had taken place on the application.

Plaintiff here alleges that Defendants' actions violated his "God-given, unalienable rights" under the Constitution of the United States (the Constitution) and the Constitution of the State of Texas. The claimed violations included provisions set forth in the First, Fourth, Fifth, Ninth and Tenth Amendments.

II. MOTION TO DISMISS STANDARD

Pursuant to FED. R. CIV. P. 12(b)(6), dismissal of an action is appropriate whenever the complaint, on its face, fails to state a claim on which relief can be granted. When considering a motion to dismiss, the court should construe the allegations in the complaint favorably to the pleader and accept as true all well-pleaded facts in the complaint. Guidry

v. Bank of LaPlace, 954 F.2d 278, 281 (5th Cir. 1992). Dismissal of a claim is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the allegations which would entitle the plaintiff to relief. Hishon v. King & Spaulding, 467 U.S. 69, 73 (1984); Rolf v. City of San Antonio, 77 F.3d 823, 827 (5th Cir. 1996).

III. ANALYSIS

According to Plaintiff, the provisions of the Texas Transportation Code to which the citation refers do not apply to him; Plaintiff explicates his position:

> 3. Plaintiff's position and complaint against defendants is that the defendants conspired together and attempted to apply commercial, civil statutes against plaintiff in a criminal proceeding. Plaintiff's complaint is that defendants invented the "probable cause" to arrest plaintiff's travel and then arraigned plaintiff criminally for violation of a civil, commercial statute. Plaintiff's complaint is that defendant Simms violated the Judicial Code of Conduct which is a part of due process of law which plaintiff has a right to expect under the Constitution for the united [sic] States of America (1787) and the Constitution of the State of Texas.
>
> 4. Plaintiff's complaint is that the acts and things made the basis of this suit were done in order to deprive plaintiff of property, i.e. money. Plaintiff's complaint is that these types of activities are a regular method of doing business by defendant [sic] and that these things are done in violation of defendants' oaths of office, the several constitutions aforementioned and at the order of defendant City of Houston.

Plaintiff's Response To Defendant's [sic] Motion To Dismiss (Plaintiff's Response), ¶¶ 3-4.[4]

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[4]Docket Entry Number 14.

Plaintiff believes that he is not required to register his vehicle or obtain an inspection sticker because, on his interpretation, those statutes do not apply to him. [5]

Plaintiff's position appears to derive from his beliefs concerning "personhood" and "citizenship." He sketches his argument in a document entitled "Plaintiff's Memorandum on Diversity of Citizenship" (Plaintiff's Memorandum).[6]

According to Plaintiff, there are two classes of citizens, de jure and de facto. He claims that the first class, de jure citizens, derives its citizenship from the Constitution, specifically from the Preamble wherein "We the People" state that they enter into the Constitution for themselves and their Posterity.[7] De facto citizens, on the other hand, are citizens by virtue of the Fourteenth Amendment.[8]

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[5]Plaintiff stated, inter alia, that "Plaintiff could not plead 'not guilty' because plaintiff does in fact not register his automobile with the State of Texas since plaintiff is not required to do so by law." Plaintiff's Response ¶ 7.

[6]Docket Entry Number 2.

[7]The full text of the Preamble states:

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

U.S. CONST. pmbl.

[8]Plaintiff explains:

The sovereign De Jure citizen has God-given, unalienable rights which are protected from encroachment by one or all three branches of government combined by the Constitution for the united [sic] States of America (1787), which created all three branches of government. The "person" citizen is a De facto citizen of the United States, and thereby a citizen of the state wherein he resides. That "person" has only civil rights, which are created by operation of law, enforced by operation of law and destroyed by operation of law. They are "subjects" as stated in the Fourteenth Amendment to the Constitution of the United States of America. They do not have unalienable God-given rights provided for by the Founders of the Constitution. They have only "equal" civil rights....

Plaintiff's Response, ¶ 66.

Plaintiff argues that, as a free white Christian, he enjoys de jure citizenship. Because of this, he - not the State - is the sovereign.[9] After a lengthy exposition delineating his views of the different classes of citizens, Plaintiff provides this further explanation:

> The relevance of the foregoing to the instant case resides in the fact that the class of citizenship to which an individual belongs determines the jurisdiction to which he is liable and the justice which he is due. When the entity being dealt with is defined by statute, then the question of whether a party brought before the court falls within that statutory defined class, is relevant to the case.

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[9]Plaintiff states:

Plaintiff has repeatedly stated, and has shown conclusively from the evidence submitted in plaintiff's memorandum of law on diversity of citizenship, the plaintiff is the sovereign in this case. The corporate State of Texas, which has presumed to enact legislation to control statutory creations of Congress via the Fourteenth Amendment, is not sovereign over this plaintiff. Plaintiff has reminded defendants that Art. 1, Sec. 2, of the highest law in the state, the Constitution of he State of Texas, clearly states that inherent political power rests with the people, NOT with the corporate State of Texas. Plaintiff is a member of the "people" who are sovereign ... The corporate State of Texas, with its corporate political subdivision the City of Houston, has forgotten who is sovereign and instead asserts itself as sovereign. That is a blatant perversion of the law to make such a claim when faced with a member of the Posterity spoken of in the Preamble to the Constitution for the united States of America. Defendant Houston lays claim to statutorily created immunity from tort liability. This is tantamount to telling the sovereign that the servant may deal with the sovereign as the servant pleases. Such a statement is foolishness on its face and has no basis in law....It is the plaintiff who is sovereign; the defendants are NOT sovereign.

Plaintiff's Response, ¶¶ 56-7

Elsewhere Plaintiff states:

"The King can do no wrong!" ... The facts are that plaintiff is the sovereign, not the State of Texas, not the City of Houston or any other political or corporate subdivision of the corporate State of Texas....

Plaintiffs Rebuttal To Defendant's [sic] Answer And Request To Strip All Immunity From Defendants, ¶ 104, Docket Entry Number 13.

> The jurisdictional challenge before the court is based upon the fact that **the Accused is not of the class contemplated by or through the Fourteenth Amendment or it's [sic] statutes.**

Plaintiff's Memorandum, ¶ 144 (emphasis in original) (paragraph number omitted).

Thus, according to Plaintiff, he is not a "person", subject to the statutes; rather he is the sovereign. Plaintiff's argument fails, and his case must be dismissed, for three reasons: 1) mandatory authority does not support Plaintiff's interpretation; 2) Plaintiff's complaint states no cause of action; and, 3) the Rooker/Feldman doctrine.

A. No Binding Authority

Plaintiff's argument requires this court to accept his premise that there are indeed two different classes of citizenship and that they differ in the manner that he claims. But Plaintiff has not provided the court with any mandatory precedent requiring that his interpretation be adopted.[10] In fact, the precedent binding on this court yields a different interpretation than Plaintiff's.

In a recent case involving the Second Amendment, the Fifth Circuit concluded that "the people,' as used in the Constitution...refers to individual Americans." United States v. Emerson, 270 F.3d 203, 229 (5th Cir. 2001). In reaching

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[10]Most of the authority Plaintiff cites in support of his interpretation is either from secondary sources - such as "Commentaries On The Constitution Of The United States" by Joseph Story - or from cases that have been abrogated or overturned - such as the Dred Scott case, Scott v. Sanford, 60 U.S. (19 How.) 393 (1856), superseded by U.S. Const. amends. XIII and XIV, and Twining v. New Jersey, 211 U.S. 78 (1908), overruled in part by Malloy v. Hogan, 378 U.S. 1 (1964). Although some of his authority -- such as Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) -- remains good law, the authority on which Plaintiff relies heavily to support his argument is either non-binding secondary sources or invalidated authority. As noted in the text, the authority which this court is required to follow weighs against Plaintiff's position.

this conclusion, the court quoted the United States Supreme Court:

> "'[T]he people' seems to have been a term of art employed in select parts of the Constitution. The Preamble declares that the Constitution is ordained and established by 'the People of the United States.' The Second Amendment protects 'the right of the people to keep and bear Arms,' and the Ninth and Tenth Amendments provide that certain rights and powers are retained by and reserved to 'the people.' While this textual exegesis is by no means conclusive, it suggest that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and power are reserved in the Ninth and Tenth Amendment, refers to a class of people who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." (citations omitted)

Id. at 228 (quoting United States v. Verdugo-Urquidez, 494 U.S. 259 (1990).

Although Emerson is not exactly on point with the instant case, it clarifies that the law in this circuit, which this court is bound to follow,[11] is that "the people" are those persons who are part of the national community. The Fifth Circuit in no way intimates that it ascribes to the dual class of citizenship propounded by Plaintiff. The court is unable to locate any binding authority that supports Plaintiff's racist interpretation of the U.S. Constitution, and the court will not adopt such a position without explicit precedent.

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[11] See, e.g., Even H. Caminker, "Why Must Inferior Courts Obey Superior Precedents?" 46 STAN. L. REV. 817, 818, 824 (1994) (footnotes omitted):

> [A] court is always bound to follow a precedent established by a court "superior" to it. Hence a lower court judge must view herself "as the simple(and perhaps simple-minded) enforcer of the Supreme Court's dictates, however wise or unwise they may appear to the hapless judge below."
>
> * * * * *
>
> A court must follow the precedents established by the court(s) directly above it. District courts must follow both Supreme Court decisions and those issued by whichever court of appeals has revisory jurisdiction over its decisions....

B. No Cause of Action

As a *pro se* litigant, Plaintiff is held "'to less stringent standards than formal pleadings drafted by lawyers.'" Guerrero v. Hauck, 502 F.2d 579, 580 (5th Cir. 1974) (citing Haines v. Kerner, 404 U.S. 519, 520 (1971)). Consequently, the court reads Plaintiff's complaint very broadly. Thus interpreted, the complaint appears to set forth a § 1983 action.[12]

Plaintiff, however, vehemently denies that he is raising a claim under §1983. In the complaint, Plaintiff expressly states: "Plaintiff's case is not brought under §1983."[13] He reiterates this numerous times in his response.[14] He goes on to explain how, as a *de jure* citizen, he is not required to use §1983:

> As plaintiff has reminded defendants regularly, a §1983 case is brought by a citizen subject, a citizen whose citizenship is a statutory creation of Congress via the Fourteenth Amendment. Plaintiff, on the other hand, is a sovereign, *De Jure* citizen of the State of Texas.
>
> * * * * *
>
> There is NO resemblance between this case, a petition for redress of grievances under Article the First of the Bill of Rights of 1791, and a § 1983 action. The former is a right guaranteed to plaintiff as a member of the Posterity spoken of in the Preamble to the Constitution for the united [sic] States of America (1787). The latter is a statutory creation of Congress for the purpose of protecting the civil rights of "persons" who themselves are citizen subjects, statutory creations of Congress and made so via the Fourteenth Amendment to the Constitution for the United States.

Plaintiff's Response, ¶¶ 49; 66.

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[12]42 U.S.C. § 1983.

[13]Plaintiff's Original Complaint, ¶86, Docket Entry Number 1

[14]See, e.g., Plaintiff's Response, ¶ 35: "Plaintiff has stated repeatedly that this case is not brought under § 1983 but that it is brought under Article the First of the Bill of Rights of 1791, which the plaintiff, as a member of the Posterity spoken of in the Preamble to the Constitution, has a secured right to demand."

According to Plaintiff, an enabling statute is only needed by Fourteenth Amendment citizens, not by those, like him, who are sovereign.[15]

The courts, however, disagree and require that actions for constitutional violations by state actors be brought under §1983. The Fifth Circuit concurs: "Although there have been a few notable exceptions, ... the federal courts, and this Circuit in particular, have been hesitant to find causes of action arising directly from the Constitution....Congress had provided a means of seeking relief against state officials who violate the Constitution." Hearth, Inc. v. Dep't of Pub. Welfare, 617 F.2d 381, 382 (5th Cir. 1980);[16] see also Garrett v. Dallas Pub. Schs., No. Civ.A. 3:98-CV-3016G, 1999 WL 1212859 *2 (N.DTex. 1999)("'42 U.S.C. § 1983 is the necessary vehicle through which a plaintiff must assert a Constitutional claim. If the plaintiff does not assert 42 U.S.C. § 1983, the plaintiff's federal Constitutional claims should be dismissed.'"; Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d 705, 705 (9th Cir. 1992), *cert. denied*, 506 U.S. 1081 (1993) ("Plaintiff has no cause of action directly under the United States Constitution. We have previously held that a litigant complaining of a violation of constitutional right must utilize 42 U.S.C. § 1983."). As plaintiff adamantly denies that he is using this necessary vehicle, § 1983, in bringing his action for constitutional violations, his complaint fails to state a claim upon which relief may be granted.[17]

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[15]Plaintiff is the sovereign and needs no "enabling statute" in order to bring a suit for redress of grievances as is provided for under Article the First of the Bill of Rights of 1791. Only those citizen subjects who are 'persons' within the meaning of the Fourteenth Amendment need resort to the statutes to enable them to bring suit." Plaintiff's Response, ¶ 41.

[16]The court went on to note that no attempt was made to use § 1983 and to conclude that the complaint in question failed to state a claim upon which relief may be granted. Hearth, Inc., 617 F.2d at 383.

[17]The court finds that Plaintiff, unlike most *pro se* litigants, is cognizant of the statute and how it is used; nonetheless, he unambiguously states that he is not employing - and need not employ - this section.

C. Rooker/Feldman

Even if Plaintiff's complaint were to state a claim, this court would be unable to consider it because its interference would impinge upon the comity interests of the state court, in violation of the Rooker/Feldman abstention doctrine. The Fifth Circuit has explained the doctrine:

> Absent specific law otherwise providing, [the Rooker/ Feldman] doctrine directs that federal district courts lack jurisdiction to entertain collateral attacks on state court judgments. Constitutional questions arising in state court proceedings are to be resolved by the state courts. If a state trial court errs the judgment is not void, it is to be reviewed and corrected by the appropriate state appellate court. Thereafter, recourse at the federal level is limited solely to an application for a writ of certiorari to the United States Supreme Court. The casting of a complaint in the form of a civil rights action cannot circumvent this rule, as absent a specific delegation "federal district court[s], as court[s] of original jurisdiction, lack[ ] appellate jurisdiction to review, modify, or nullify final orders[s] of state court[s]."

Liedtke v The State Bar of Texas, 18 F.3d 315, 317 (5th Cir.), *cert. denied*, 513 U.S. 906 (1994) (footnotes omitted).

Thus, Rooker/Feldman precludes this court's review of alleged constitutional improprieties in the state proceedings at issue in this case.[18]

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[18]There is no indication in the record whether Plaintiff was actually convicted of the offenses in the citation; if he was, his action would also be barred by Heck v. Humphrey. In Heck v. Humphrey, the Supreme Court held that a plaintiff does not have a cause of action for damages, under 42 U.S.C. § 1983, when the allegations, if proved, would render the conviction or sentence invalid and the conviction or sentence has not been reversed or invalidated in state court:

> [I]n order to recover damages for allegedly unconstitutional conviction or inprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.

Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (footnote omitted).

According to the Supreme Court, Heck does not provide an exception to § 1983, requiring exhaustion; instead, the decision denies that a § 1983 action even existed. Id. at 489. In other words, a plaintiff does not have a cause of action under § 1983 if 1) success on his allegations would invalidate the conviction or sentence and 2) the plaintiff has not proved that the conviction or sentence was reversed or declared invalid by an authorized state tribunal.

The court cannot find any evidence in the record demonstrating that Plaintiff exhausted his state court remedies and that his conviction, if any, was so invalidated. Consequently, if he were to recast his claim under § 1983, it would be dismissed because, pursuant to Heck, there is no § 1983 action.

IV. Conclusion

For the foregoing reasons, the court **RECOMMENDS** that Defendant's City of Houston, Texas, Anthony Hall, Jr., C.H. Brenham and Daniel Jay Simms' Motion To Dismiss be **GRANTED** and that the action be **DISMISSED** with prejudice. In light of this, the court also **RECOMMENDS** that the remaining motions be **DENIED** as **MOOT**. Furthermore, the court **RECOMMENDS** that Plaintiff's habeas corpus application be **DENIED**. It is also **ORDERED** that Plaintiff's Request For Findings Of Fact And Conclusions Of Law be **DENIED**.

The Clerk shall send copies of this Memorandum and Recommendation to the respective parties who have ten (10) days from the receipt thereof to file written objections thereto pursuant to General Order 2001-6. Failure to file written objections within the time period mentioned shall bar an aggrieved party from attacking the factual findings and legal conclusions on appeal.

The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas 77208. Copies of such objections shall be mailed to opposing parties and to the chambers of the undersigned, 515 Rusk, Suite 7019, Houston, Texas 77002.

DONE in Houston, Texas, this 30th day of January, 2002.

s/ Nancy K. Johnson
United States Magistrate Judge